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COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN ANY PART OF THE WORLD

Written statement* submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31

[10 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

GE.00-10853 (E)

I. The report of the Special Rapporteur for the former Yugoslavia (E/CN.4/...) presents a comprehensive panorama of the human rights situation in that region.

However, in that document the AAJ wishes to refer especially, not to the violations of human rights which have been almost unanimously denounced and condemned by the international community and also through the jurisdictional work of the International Tribunal for the former Yugoslavia, but to those violations which are being almost entirely ignored (except by the Special Rapporteur), notwithstanding the fact they are intrinsically of the utmost gravity and because they are being committed through acts or omissions by a coalition of major powers which has taken upon itself the role of representative of the international community and of the worldwide policeman and guarantor of human rights.

The Special Rapporteur refers to these violations in his report A/54/396-S/1999/1000 (24 September 1999) (E/CN.4/...), in particular in paragraphs 91 (use of depleted uranium in ammunition, cluster bombs, the ethnic cleansing of nearly 200,000 non-Albanians from Kosovo), 92 (absence of legal safeguards and lawlessness currently prevalent in Kosovo), 94 and 103 (material destruction and deaths of civilians during the NATO bombardments) 96 and 97 (impunity of the KLA), 101 (violations of freedom of expression) and 102 (ecological damage).

In the addendum A/54/396/Add.1-S/1999/1000/Add.1 (3 November 1999) (E/CN.4/...) to his report, the Special Rapporteur describes the violations of human rights which are still being committed in Kosovo (paras. 26, 27 and 28). In paragraph 34 he states that "our problem is that this is now happening in the presence of UNMIK, KFOR and OSCE".

In paragraph 29 of the addendum the Special Rapporteur notes the inaction of the International Tribunal for ex-Yugoslavia in the face of these violations.

II. The AAJ, together with a group of Canadian jurists, has sought to stimulate the International Tribunal for the former Yugoslavia into activity in that direction; on 7 May 1999 they filed a complaint with the prosecutor of the Tribunal against the leaders of NATO. A meeting with the prosecutor was held in June, and a second meeting was held with the new prosecutor in November.

Some of the legal arguments set out in the complaint (in addition to pointing out that the armed attack launched by NATO of itself constituted a violation of the United Nations Charter) were as follows:

1. The general strategy of NATO, which consisted of launching attacks from a distance (missiles) or from aeroplanes flying at an altitude of 5,000 metres, prevented the taking of the "precautions in attack" stipulated in article 57 of Protocol I to the Geneva Conventions and violates the "basic rule" laid down in article 48 of that Protocol, namely that a distinction must always be made between the civilian population and combatants and between civilian objects and military objectives, and that operations must be directed only against military objectives.

Although that strategy was clearly likely to cause damage prohibited by the Geneva Conventions, it was decided to resort to it. Criminal liability thus arises because of the possibility of wilful damage, i.e. when the author of a course of action is aware that that course of action may cause prohibited damage but pursues it nonetheless.

The generalized and deliberate attacks against the civil infrastructure, and particularly against electric power stations and drinking water sources and pipelines, violated article 54, paragraph 2, of Protocol I, under which it is prohibited to render useless objects indispensable to the survival of the civilian population.

Equally, there was failure to comply with the provision in article 52, paragraph 3, of Protocol I to the Geneva Conventions to the effect that, in case of doubt, an object which is normally dedicated to civilian purposes shall be presumed not to be used for military purposes. The aerial attacks against Yugoslavia have the characteristics of war crimes as defined in the Geneva Conventions of 1949, its Optional Protocols of 1977, the Hague Conventions of 1889 and 1907 and other instruments of international humanitarian law.

These crimes could also be designated as crimes against humanity (article 6, subparagraph (c), of the Charter of the Nurnburg Tribunal ("murder ... and other inhumane acts") and of article 5 of the Statute of the International Tribunal for the former Yugoslavia (crimes against humanity, and in particular (a) murder, and (i) other inhumane acts)).

The provisions of international humanitarian law and the Charter of the International Military Tribunal of Nurnberg are instruments of positive law still in force and are particularly applicable to this case under the Statute of the International Tribunal for the former Yugoslavia, which has competence to try persons responsible for such crimes.

3. The use of cluster bombs, designed to destroy "soft" objectives (that is to say, to bring about in an indiscriminate fashion the deaths of the largest possible number of persons) and of projectiles containing depleted uranium (which cause widespread and long-term damage), and also the bombardment of chemical factories, which gives rise to the dissemination of toxic products in the environment (widespread and possibly long-term damage), are all violations of the provisions of article 35, paragraph 2, of Protocol I (prohibition of employment of projectiles and material and methods of warfare of a nature to cause superfluous injury), paragraph 3 of the same article (prohibition of employment of methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment), article 36 (new weapons which are or might be prohibited by the Protocol or any other rule of international law - the small bombs contained inside cluster bombs which remain in the ground without an exploding function in the same way as anti-personnel mines, which are prohibited under the Ottawa Convention of 1997, which came into force on 1 March 1999) and the provisions of article 55 of Protocol I, which states that "care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage".

Unexploded cluster bombs are still claiming victims in Kosovo. On 21 June two Gurkha members of the British contingent and two Albanian civilians were killed by the explosion of

two of these bombs. In September, too, a number of children were maimed as a result of the explosion of bombs of this type. It is estimated there are 20,000 of these unexploded bombs scattered in various places.

The above are, in condensed form, some of the arguments advanced by the AAJ and the Group of Canadian jurists to the prosecutor of the tribunal for the former Yugoslavia.

4 But the leaders of NATO and the OSCE have incurred other serious responsibilities. The decision to begin bombardments, and the ensuing withdrawal of all the OSCE observers, implied deliberate dereliction by the OSCE and NATO of their duty as guarantor of the enforcement of human rights in Kosovo, which they had already accepted and had begun to implement.

It might be argued that that decision was a manner of discharging the function of guarantors by other and more effective means. But the developments - which were foreseeable - which took place in Kosovo from 20 March onwards - the exponential stepping up of repression and the mass exodus of the population - show that the result was the opposite of that which, supposedly, it was sought to achieve.

The indictment charging Milosevic and other Yugoslav leaders with war crimes and crimes against humanity contains the following (para. 36): "immediately on the beginning of the aerial bombardments, the forces of the RFY and Kosovo intensified their systematic campaign and forcibly expelled hundreds of thousands of Albanians from Kosovo", while paragraph 37 states: ... "beginning on 24 March 1999, the forces of the RFY and Serbia engaged not only in forcible expulsions but also in numerous massacres of Albanians in Kosovo".

The obvious conclusion is that the maintenance of the observers in the field would have prevented the result described in paragraph 36 of the indictment.

Consequently, the withdrawal of the observers implies the complicity of NATO and the OSCE, in the form of commission by omission, in the crimes committed in Kosovo between 24 March and 9 June 1999.

"All the duties relating to the avoidance of a result are based on the fundamental idea that the protection of the endangered legal asset depends on a positive input by a particular person and that those concerned put their trust in active intervention by that person and can do so." (Jeschek, Lehrbuch des Strafgesetzes)

Jeschek goes on as follows: "complicity by omission may also be appropriate inasmuch as the accomplice has a duty as a guarantor. As a rule, the distinction between co-authorship and complicity does not raise problems here because, together with the author of a fraudulent offence of commission, who controls the situation, the contribution to that offence by the guarantor who takes no steps to avert it in principle only comes under the heading of complicity."

5 The leaders of NATO have an objective responsibility for the crimes currently being committed in Kosovo against the Serbs and other minorities and against the Albanians whom the KLA describe "collaborationist". That responsibility derives

1 From the general principles of international law, which stipulate that whoever has effective control of a territory is responsible for the security of its inhabitants,

2 From article 2 of the Fourth Geneva Convention of 1949 (protection of civilian persons in time of war), which states "the Convention shall also apply to all cases of partial or total occupation of the territory by a high contracting party, even if the said occupation meets with no armed resistance",

3 From the commitment accepted by NATO, represented by General Michael Jackson, in the "military technical agreement" of 9 June 1999, annex A 1 of which stipulates "the internal security force (KFOR) will deploy and operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment with all citizens of Kosovo",

4 From Security Council resolution 1244 (1999), which contains the following "9 Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include

(b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below,

(d) Ensuring public safety and order until the international civil presence can take responsibility for this task, "

5 And without doubt they are responsible for the crimes committed by the KLA, which has been converted into a "civil force" acting under the supervision of KFOR.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by the American Association of Jurists,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

THE RIGHT TO DEVELOPMENT

The World Trade Organization: impartial arbiter in international economic relations or a tool of the major powers and transnational corporations?

The beginnings of an answer to the question in the heading can be found by studying some of the agreements reached in Marrakesh in 1994 at the same time as the World Trade Organization and the dispute settlement bodies (DSBs) were established.

I The Agreement on Textiles and Clothing

The existing multi-fibre arrangements are intended to place restrictions on the export of clothing and textiles from developing countries to developed countries. The multi-fibre arrangements (which basically protect the textile industry in developed countries) cost consumers in the countries of the Organisation for Economic Co-operation and Development (OECD) thousands of millions of dollars – especially consumers on the lowest incomes, who spend a large part of their incomes on clothes. According to an official report from the United States in 1988, the protection of the textile industry was costing every household in the country between $200 and $400 a year.

It should be pointed out that the job losses in the textile industry in the developed countries are above all the consequence of technological changes, not of competition from the textile industry in developing countries. The objective of the multi-fibre arrangements is not to protect jobs but to protect investments.[1]

The principal beneficiaries of the multi-fibre arrangements are transnational corporations, which are in a "win-win" situation: on the one hand, as privileged exporters (setting up in the export processing zones of poor countries, where they take advantage of cheap labour in general and that of women and children in particular) and on the other as importers, also benefiting from preferential tariffs, in the developed countries.[2]

The 1994 GATT Agreement on Textiles and Clothing provides for the complete elimination of the multi-fibre arrangements in 10 years, in four stages related to the total imports of these goods. This means that imports between OECD countries, which are not covered by the multi-fibre arrangements, are included in "liberalization", which allows OECD countries first to "liberalize" trade among themselves, and as the biggest stage (49 per cent) is due in 2005, the developing countries will theoretically benefit from the liberalization of trade in textiles and clothing only on that date, although before then more changes may occur in the international trading conditions for those products, under pressure from the big transnational corporations.

The Agreement also provides for safeguards, anti-dumping measures, transitional safeguards, etc. In the first few months of 1994 the European Union imposed some 20 anti-dumping measures on textile products from new exporters such as India and Pakistan.[3]

This may explain the developed countries' great interest at present in the introduction of a social clause into trade agreements. Their interest is clearly economic and their aims protectionist; they have not developed a sudden concern for social matters.

Notwithstanding the hypocrisy of those who now appear to be so concerned about the labour situation in Third World countries (child labour, etc.) while at the same time advocating "flexibility" in existing labour standards, the problem of working conditions in many Third World countries is real and requires energetic action by the relevant organizations, especially the International Labour Organization.

II The General Agreement on Trade in Services

This agreement accounts for the lion's share of the Final Act of the Uruguay Round, signed in Marrakesh, and works to the advantage of the big transnational service corporations operating in the areas of finance, communications, transport, information technology, audiovisual services, advertising, insurance, pensions, food, distribution of goods, hotels, tourism, etc., who dominate those areas of activity.

The value of international trade in services, including trade carried out by means of direct investment, is estimated at $3 trillion ($3 million million), almost the same as international trade in goods ($3.6 trillion).[4]

The General Agreement on Trade in Services (GATS) is quite separate from the General Agreement on Tariffs and Trade (GATT). This prevents "cross-negotiation", for example, a developing country may not set as a condition for opening its borders to services the opening of the other party's borders to its own products. The Final Act does allow, on the other hand, "cross-retaliation", that is, a major power may close its borders to goods from a developing country if the latter does not comply with the "liberalization" of services.[5]

III The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement)

The winds of "liberalization" subside when they reach this agreement, as it deals with monopolistic and oligopolistic property (which is in the hands of the transnational corporations), cutting-edge technologies and many trademarks and patents, which are the source of huge profits. For this reason, no agreement was ever reached in the talks that went on for years in the United Nations Conference on Trade and Development (UNCTAD) on the adoption of an international code of conduct on the transfer of technology, and now the TRIPS Agreement has been adopted, firmly establishing that economically useful knowledge is private property.

The term of protection conferred by a patent has been set at 20 years (art. 33) and that for trademarks is indefinite (seven years renewable indefinitely, art. 18), which means an excessive delay before new knowledge passes into the public domain, to the exclusive advantage of patent-owners, which are mostly transnational corporations.

It is argued that long-term protection of owners encourages them to invest in research, but this is to forget three things: (1) quite a lot of investment in research is paid for by the State (in other words the taxpayer), (2) the profits from the marketing of knowledge (which are usually exorbitant, as in the case of basic drugs in the pharmaceutical industry) offset the owner's investment in research and begin to produce huge net profits in very short periods of time, (3) new knowledge is the result of the combined work of scientists, technicians and workers, so

that it is debatable whether it belongs exclusively to those who invested money in the research (if indeed they invested money and were not simply taking advantage of public investment).

Moreover, the Agreement covers the patenting of life forms (art. 27, para. 3 (b), on micro-organisms), which implies, among other things, an infringement of international patent legislation[6] and the possible appropriation by private individuals of traditional knowledge and methods that are part of the common heritage of different peoples.

The TRIPS Agreement has highlighted the already visible negative aspects of technology transfer and, contrary to the optimistic forecasts based on neoliberal ideology, will widen the technological gap between the industrialized countries and the developing countries to the detriment of the development of the latter and will affect basic human rights such as the rights to health and to sufficient food.

IV Dispute settlement bodies (DSBs)

(1) These are characterized by their lack of transparency, since they are made up exclusively of civil servants, meet behind closed doors and are accountable to nobody. Representatives of citizens, consumers, peasants' organizations, workers, professionals, the academic and scientific community, etc., take no part at all in them.

(2) The DSBs become involved in all manner of subjects (agricultural policy, intellectual property, etc.), so that their decisions can affect national policies in those areas. For example, they can force countries to accept the marketing of products containing genetically modified organisms (GMOs), in violation of the precautionary principle adopted at the United Nations Conference on Environment and Development.[7]

(3) The system of consensus is nothing but a sham, since the important decisions are in fact taken by the major powers (the "Group of Four" – the United States, Canada, Japan and the European Union), as in the case of the Blair House Agreement.

V Conclusions

In general, the content of the Agreements clearly favours the major industrialized countries and there are no real counterbalances to the de facto dominance of transnational corporations and the major powers in the international economy and finance.

The United States, whose transnational corporations are the major beneficiaries of these Agreements, has nevertheless reserved the right to withdraw from WTO if a special group of five federal judges finds that three decisions have been taken that negatively affect that country's interests within a period of five years.[8]

Notes

[1] UNCTAD, "The outcome of the Uruguay Round: an initial assessment", New York, 1994, p. 109.

[2] Messerlin, Patrick, "La nouvelle Organisation Mondiale du Commerce", Paris, Dunod, 1995, p. 124, note 1.

[3] Ibid., p. 132.

[4] Ibid., p. 214.

[5] Ibid., p. 253.

[6] Bertrand, Agnès, "Comment peut-on breveter la vie?", in GATT/WTO symposium, 17-18 November 1995, Centre Europe – Tiers Monde.

[7] Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-4 June 1992, Rio Declaration on Environment and Development, Principle 17 (A/CONF.151/26/Rev. 1 (Vol. 1)).

[8] Davide Mortellaro, Isidoro, "Le instituzione della mondializzazione", in Pietro Ingrao and Rossana Rossanda, eds., *Appuntamenti di fine secolo*, Manifestolibri, Rome, 1995, p. 254, note 21, and Messerlin, op. cit., p. 310.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: (d) INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement* submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organziation.

INDEPENDENCE OF THE JUDICIARY

STATUTE OF THE INTERNATIONAL CRIMINAL COURT

Jurisdiction ratione temporis - Jurisdiction ratione materiae - Promotion of criminal action - Independence of the Court

On 17 July 1998, an international Diplomatic Conference held in Rome adopted the Statute of an International Criminal Court. One hundred and twenty government representatives voted in favour, seven representatives voted against and there were 21 abstentions (A/CONF.183/9).

The Conference also decided to establish a Preparatory Commission for the Court, which is studying the draft texts of the rules of procedure and evidence and elements of crime (A/CONF.183/9, annex 1).

The Statute remained open for signature by States and will enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance or approval with the Secretary-General of the United Nations (article 126 of the Statute). In other words, the Statute will enter into force once it has been ratified by a minimum of 60 States.

I. Jurisdiction ratione temporis

The Court will have jurisdiction with respect to crimes committed after the entry into force of the Statute (Statute, art. 11, para.1).

Nationals of States which accede to the Statute after its entry into force may be subject to the jurisdiction of the Court only with respect to crimes committed after the accession of their State (art. 11, para. 2).

The future Court will not concern itself with crimes against humanity or war crimes committed prior to the Statute's entry into force, despite the fact that both crimes were declared imprescriptible by the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968, and despite the recent precedents of the Tribunals for Yugoslavia and Rwanda, which deal with serious violations of human rights committed before their establishment.

II. Jurisdiction ratione materiae

The crimes which will concern the Court are listed in article 5: (a) genocide, (b) crimes against humanity, (c) war crimes and (d) aggression. The first three are described in articles 6, 7 and 8.

The Court will not have jurisdiction with respect to, inter alia, the following crimes, which have not been included in the Statute, although some of them may be characterized as crimes against humanity:

(1) Child prostitution and child pornography.

Article 7.1 (g) of the Statute (Crimes against humanity) refers to "enforced prostitution", which does not include the offence committed by persons who prostitute minors who have given (or are assumed to have given) their consent. According to the laws of a number of countries, minors may give their sexual consent at the age of 15 or even 12. The expression "enforced prostitution" naturally excludes international traffickers in adults who have given (or are assumed to have given) their consent. Such traffickers or procurers are supposedly respectable "sex impresarios". In other words, a particularly odious and repulsive crime is excluded from the jurisdiction of the Court.

Similarly, the Court will not have jurisdiction with respect to:

(2) Unlawful international adoptions;

(3) Traffic in human organs;

(4) Ecological crimes (wilful and severe damage to the environment). This crime appeared in article 26 of the text of the Code of Crimes against the Peace and Security of Mankind, adopted by the United Nations International Law Commission at first reading, but was deleted on second reading and in the final text.

(5) Illicit traffic in narcotic drugs (which appeared in article 25 of the above text but was deleted from the final text);

(6) Colonial domination and other forms of alien domination, which appeared in article 18 of the above text but was also deleted from the final text of the draft prepared by the International Law Commission;

(7) Intervention (article 17, also deleted from the final text of the draft Code of Crimes against the Peace and Security of Mankind prepared by the International Law Commission);

(8) Recruitment, use, financing and training of mercenaries (article 23 of the text quoted, also deleted). It may be mentioned that an international convention on the subject, adopted by the General Assembly, has not entered into force for lack of sufficient ratifications;

(9) Economic crimes (serious mass violations of economic, social and cultural rights).

A number of extremely serious crimes remain outside the Court's jurisdiction. Nearly all these have in common a link to activities which bring in huge profits and the resistance of certain powerful nations to imposing effective punishment.

As regards war crimes (Statute, art. 8), a State, on acceding to the Statute, may declare that, for a period of seven years it does not accept the jurisdiction of the Court with respect to

this category of crimes if they are committed by its nationals or on its territory (art. 124). This means that the Statute envisages the possibility that States, even when they are parties to the Statute, may grant themselves a moratorium to commit war crimes for seven years after their accession to the Statute, despite the existence of the Geneva Conventions of 1949 and the 1979 Protocols Additional to the Geneva Conventions.

As regards the crime of aggression, the last part of article 5 of the Statute states that the Court shall exercise jurisdiction over the crime of aggression once, in accordance with articles 121 and 123, the crime is defined and the conditions under which the Court shall exercise jurisdiction with respect to this crime are set out. Articles 121 and 123 provide for a period of seven years after the Statute's entry into force for the introduction of substantive amendments, including the introduction of the definition of aggression and the conditions under which the Court shall exercise jurisdiction with respect to this crime.

The inclusion in the Statute of the definition of aggression is thus postponed for a long time (seven years after the Statute's entry into force), and only then will the Court have jurisdiction with respect to this crime, even though the General Assembly adopted a definition of aggression by consensus in 1974 (General Assembly resolution 3314 (XXIX)).

An aggravating factor is that the crime of aggression will probably first be "filtered" by the Security Council, meaning that the jurisdiction of the Court will depend on whether the Security Council first decides that a given situation constitutes an aggression.

III. Promotion of criminal action

The Court shall exercise its jurisdiction when the Prosecutor receives a referral from a State Party (art. 13 (a) and art. 14), when the Prosecutor initiates investigations proprio motu on the basis of information he has received (art. 13 (c) and art. 15) and when (art. 13 (b)) "A situation in which one or more such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations" (as set out in article 5).

Article 13 (b) should be taken to mean that the Security Council may make referrals against nationals of any State, whether or not it is a party to the Statute and whether or not it accepts the jurisdiction of the Court.

IV. Independence of the Court

Article 16 of the Statute provides that the Court may not commence or proceed with an investigation or prosecution for a period of 12 months if the Security Council, under Chapter VII of the Charter of the United Nations, so requests. The Security Council may apparently reiterate this request to the Court indefinitely. This means that the Court will have to act with the sword of Damocles of the Security Council perpetually hanging over it, the Council being able at any time to paralyse its activity with respect to any given case, and this indefinitely.

This is a clear denial of the Court's independence, in violation of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, which establish the principle of the independence of the judiciary.

Professor Philippe Weckel has written that, in adopting the Statute of the International Criminal Court, the participants in the Rome Conference have dismissed the notion of an independent international judiciary, since the Court will be unable to function without the support of the Security Council.[1]

For his part, the Special Rapporteur on the independence of judges and lawyers, referring to article 16 of the Statute, has said: "Article 16 leaves the Security Council a large role by authorizing it to delay investigations or prosecutions for a year or more. The political role of the Security Council in triggering the Court's investigation and prosecution powers may, depending on how this role is played, substantially undermine the judicial independence of the Court by precluding judicial review of situations politically sensitive to one or other of the permanent members of the Council, who, of course, wield the power of veto".[2]

It may be asked whether national Parliaments should ratify a Statute vitiated by invalidity since it is contrary to some aspects of international human rights law in force (for example, with regard to the definition of aggression, the imprescriptibility of war crimes and crimes against humanity, and the sanctioning of war crimes) and, in particular, because it establishes a Court which has no independence and thus violates article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights.

A treaty is void if "it conflicts with a peremptory norm of general international law" (Vienna Convention on the Law of Treaties, article 53).

Notes

[1] Revue générale de droit international public (RGDIP), vol. 102, 1998/4, p. 986, Paris, December 1998.

[2] E/CN.4/1999/60, para. 39.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement* submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 December 1999]

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IMPUNITY - RIGHT TO REPARATION

CIVILIAN VICTIMS OF THE INVASION OF PANAMA BY THE UNITED STATES DEMAND A DECISION FROM THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE CASE OF SALAS AND OTHERS v. THE UNITED STATES

I. 20 December 1999 marked 10 years since the United States prepared and mounted an invasion of Panama. Thousands of civilians were killed, injured or turned out of their homes by the invasion. Thousands of Panamanians affected by the invasion are waiting for the Organization of American States (OAS) Inter-American Commission on Human Rights to take a decision in the case known as Salas and others v. the United States and end the impunity enjoyed by the United States and the suffering of a people whose Government collaborates with the invaders and ignores the civilian population's demands. On 12 November 1999, more than 4,000 Panamanians gathered in front of the presidential palace in Panama asking President Mireya Moscoso to support, in OAS, the claims currently before the Inter-American Commission on Human Rights and to meet the needs of people who have been unable to find their dead relatives and the thousands of people injured during the invasion who are not receiving medical care. The President did not address the demonstrators, but they were informed that she could not support their claim or provide medical care because that would amount to "turning our back on the United States". The demonstrators are organizing a march for 20 December in front of the United States Embassy to Panama, and they would like non-governmental organizations to send messages to the Inter-American Commission on Human Rights asking it to take a decision; the United States has not put forward a single piece of evidence in the case that contradicts the allegations of the victims, who accuse the United States of violating human rights and international law.

II. This is the first time a people, unsupported by its Government, has brought an action before an international body for damage and injury to the person of the State and to individuals caused by an invasion by the United States. Although the complainants have submitted evidence of all kinds, the Inter-American Commission is demurring pointlessly over the decision it must take, thereby allowing the violations to remain unpunished.

President Moscoso, who two days after taking office in September 1999 said it was the invasion that had made elections in Panama possible, belongs to the same political party as former President Guillermo Endara, who was installed in office by the invading forces and swore the oath of office on a United States military base in Panama.

III. Summary of the case

On 7 May 1990, 70 of the victims, represented by their lawyers, José Luis Morín and Gilma Camargo, submitted a petition to the Inter-American Commission on Human Rights on behalf of themselves and all the civilians affected by the invasion, requesting the Commission, inter alia:

1. To declare the military invasion of Panama by the United States illegal and in violation of the OAS Charter;

2. To declare that the human rights recognized in the American Convention on Human Rights were violated in the case of the Panamanian civilians who suffered in the invasion;

3. To declare that, by invading, the United States had violated other international instruments, such as the Charter of the United Nations, the 1949 Geneva Conventions and their 1977 Protocols, and the 1977 Panama Canal Treaty;

4. To declare that, since its actions were illegal, the United States had an obligation to make good the material damage caused and provide compensation for the bodily injuries and loss of life sustained;

5. To decide to hold a full, independent inquiry, under the direction of the Inter-American Commission on Human Rights, to determine the full extent of the damage, losses and injuries suffered by the Panamanian people;

6. To set in motion the relevant proceedings, in accordance with its Statute, and convene a hearing of the parties;

7. To bring the case before the Inter-American Court of Human Rights in due course, and

8. To take whatever steps the Commission considered right and necessary to guarantee any other kind of remedy for the Panamanian victims.

IV. Three years after submission, the case was declared admissible by the Inter-American Commission. Between 1993 and 1996 the complainants submitted to the Commission thousands of pieces of written and oral testimony, material and audiovisual evidence and declassified documents from the United States revealing that the invasion of Panama had been planned several months in advance and carried out according to precise plans that included no arrangements for warning or protecting the civilian population of Panama. At no time during the hearings on the merits of the case did the United States submit reasons or documents challenging the complainants' arguments.

V. Thousands of victims are still living away from their homes, in areas lacking any basic services and far from the cities; they still have no information as to the whereabouts of many of their missing family members.

VI. The plaintiffs' lawyers initiated a search for the dead in mass graves, with the help of the Argentine Forensic Anthropology Team, but obstruction by the Government of Panama, and a lack of financial resources, forced them to halt the operation.

VII. Through the "Law and Solidarity Project" of the American Association of Journalists it is hoped to raise the funds needed to continue the search.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by the American Association of Jurists, a non-governmental organization in special consultative status, and Centre Europe-Tiers Monde (CETIM), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 1999]

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* This written statement is issued, unedited, as received from the submitting non-governmental organizations.

The external debt of Southern countries

Centre Europe-Tiers Monde (CETIM) and the American Association of Jurists have repeatedly raised the issue of the effects of external debt on the exercise of the right to development and economic, social and cultural rights; we have also proposed a number of reforms and mechanisms for bringing us closer to a solution to this stubborn problem.

In general, we remain firmly convinced that:

- The perpetuation of the external debt of the less developed countries and countries with economies in transition is first and foremost a political decision;

- Any progress towards resolving the problem must involve cancellation of the debt;

- There will, however, be no lasting solution without a re-examination of the underlying mechanisms that control and perpetuate unequal development, the root cause of the failure to offer equal economic, social and cultural rights for all, or at the very least without the active pursuit of voluntary policies diametrically opposed to the so-called neo-liberal laissez-faire approach.

This being the case, we urge the Special Rapporteur on foreign debt to consider the two proposals below:

A. Release methodological tools enabling organizations in civil society to identify the origins of their countries' debt and track its various components, promote and disseminate them in order to encourage such organizations to take the initiative in investigations of this kind.

Such methodologies, intended particularly for research institutes, trade unions, and citizens' organizations, could draw on research already carried out in this field. We have in mind, for example, Pierre Galand and Michel Chossudovsky's study of Rwandan debt; the study of the Democratic Republic of the Congo commissioned by the Centre National de Coopération au Développement (CNCD-NCOS) and prepared by a group of Belgian NGOs; the work done in a number of countries as part of the Jubilee 2000 campaign; the parliamentary investigations in Venezuela; and research by Argentine economists and legal scholars.

These, together with methodological proposals, could be published on an Internet site.

Governments, central banks, and international financial institutions should be encouraged to facilitate such investigations in keeping with the universal officially proclaimed desire for "transparency".

Finally, the media should be urged to report the findings in order to mobilize public opinion in support of the requisite solutions, including a solution to the misappropriation of funds, based on in-depth and balanced information.

It is an acknowledged fact that part of what is owed has been diverted from its supposed use and invested in Northern countries such as Switzerland, the United States, France, Germany, Belgium and the United Kingdom, and in some cases has never left those countries!

Other portions of the debt, subsequently "nationalized", were originally purely private loans or were covered by highly dubious State or municipal guarantees. Some seem to be the result of completely bogus transactions. Investigations into such matters obviously require widespread popular mobilization, which alone has the power to compel genuine international cooperation in this area, in particular the waiver of bank secrecy provisions.[1]

B. Organize an in-depth (legal) debate on the legal principles governing the issue of external debt (respective responsibilities of the parties, supposed continuity of the State in all circumstances, etc)

"Objectionable debts", which have been criticized by a number of academics and organizations, throw into relief certain blatant injustices that are offensive to the most basic moral sense. The debts accumulated by the South African apartheid regime and the perpetrators of the Rwandan genocide are good examples. The same is true of debts contracted by dictatorships (with the full knowledge of their creditors, who cannot plead ignorance), which any democratic government should feel obliged to repudiate.

Hence the oft-cited principle of State continuity must be placed in proper perspective and weighed against respect for more fundamental values such as compensation for victims and the honouring of human rights.

More generally, apart from the fact that, altogether, the debtor countries have paid back more than they borrowed in the first place, the ordinary people whose pockets are tapped to repay the debts have often never seen the colour of the money, as stated above.

Furthermore, the international rules on debt collection are absurd. The system is apparently designed to ensure that, whatever the original obligations of creditors and debtors, the

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[1] It would be very convenient to restrict the field of inquiry to corruption and embezzlement among "rich Southerners in high places". Clearly, much of the debt is the result of concerted efforts by Northern industrialists and bankers fraudulently to create lucrative openings which have nothing to do with genuine development needs, plus the greed of certain corrupt Southern leaders. Contrary to appearances, however, it should not be forgotten that the primary responsibility lies with the ruling circles in the North who prompted this tragic accumulation of assets and have made every effort to perpetuate it through the financial institutions which they dominate (the International Monetary Fund, the World Bank, the London and Paris Clubs, the group of seven most industrialized countries, and the Organization for Economic Cooperation and Development (OECD)). By so doing they have literally taken the peoples of the South hostage in the sense that they are perpetually in debt and liable to indefinite servitude: thus the debt serves the North as a political lever for perpetuating its domination, oppression and exploitation. In their hands, this lever remains the chief instrument for ensuring that their policies are followed locally by their "friends" in the South and East, often in the most repressive fashion, when they themselves do not intervene more directly.

population as a whole, and especially the poorest sections of society, is ultimately liable and becomes hostage to the debt. The supposedly untouchable principles involved ultimately lead to blatant injustices and an effective denial of rights.

At the same time, in order to shed more light on this debate, an historical study of de facto and de jure cases of debt forgiveness is to be recommended. This would show without a shadow of doubt the variable geometry of the principles involved, which are chiefly determined by relative strengths, assessments and balances of interests, sometimes economic, sometimes – let us hope – prompted by a concern for justice. Some examples are the South American debts of the 1930s (Chile, Brazil, Peru, Colombia and Mexico all repudiated theirs), the actions of the newly-formed USSR vis-à-vis tsarist Russia, the repudiation by the lawful Government of Costa Rica of the debt contracted by the putschist General Tinoco in 1917 (a legal victory against the Royal Bank of Canada, whose case was dismissed on the grounds that it had lent money to an illegitimate government), and applications of the constitutional principles governing the recovery of debts contracted with the United States Treasury by states of the Union.

One final point. Informal reports say that Mr. Figueredo has stepped down as the Special Rapporteur on foreign debt or is preparing to do so. We emphatically request that his successor should be appointed as quickly as possible so that this report can be prepared with the conscientiousness, care and resolve that such a serious problem warrants. The mandate should not be allowed to suffer on account of a poor initial choice of Special Rapporteur.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by the International Centre for Human Rights and Democratic Development, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 January 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The International Centre for Human Rights and Democratic Development urges the UNCHR to make global and regional trade agreements coherent with the UN Charter and the International Bill of Human Rights.

The United Nations Charter and Human Rights Treaties should prevail over global and regional trade agreements.

1.While global and regional trade agreements such as the World Trade Organization (WTO), and the North America Free Trade Agreement (NAFTA) have resulted in increased trade and wealth; they have also contributed to the reduction of social programs, labour standards and trade unions, resulting in greater inequality in the distribution of wealth, a growing gap between rich and poor, and a declining middle class.

2. These global and regional trade agreements are enforced by States and trade organizations with little or no consideration of their obligations under the UN Charter, the International Covenant on Economic, Social and Cultural Rights and other UN and International Labour Organization (ILO) conventions which most of these States have ratified.

3. The UN Charter in Article 1(3) states the following purposes:

> "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion";

and Article 1(4) which states:

"To be a Centre for harmonizing the actions of nations in the attainment of these common ends".

4. These articles are more specifically supported by UN Charter Articles 13(b), 55(c), and 62(2).

5. Finally Article 103 of the UN Charter states that «In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail».

6. Furthermore Article XX of the General Agreement on Tariffs and Trade (GATT) provides that nothing in the GATT «shall be construed to prevent the adoption or enforcement by any contracting party of measures» *inter alia*, «necessary to protect public morals», «necessary to protect human, animal or plant life or health,» and «relating to the products of prison labour», which are social considerations that go beyond pure trade matters.

7. The Preamble to the Marrakech Agreement (1994) establishing the WTO, states the fundamental goals of the WTO, which include "raising standards of living" and a "commitment to sustainable development" – also social considerations.

8. Unfortunately these social provisions in Article XX of GATT and in the Preamble of the Marrakech Agreement have either been interpreted in a very restrictive way or totally ignored in the operation of the WTO and its panels - despite:

a. the provisions of Article 31 of the Vienna Convention on the Law of Treaties which states that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose, and

b. the provisions of Article 3 of the Dispute Settlement Understanding of the WTO – which state that customary rules of interpretation in international law apply to settlement of disputes within the WTO.

9. Consequently the WTO should be interpreting its mandate more consistently with the broader spirit of Article XX of GATT and the Marrakech Preamble.

10. Finally Article XXIII(2) of the GATT, and Article V of the Marrakech Agreement provide for the participation of other intergovernmental organizations and NGOS in WTO deliberations which participation at present is virtually non-existent. Such participation would provide for a wider input into WTO decisions and policy.

11. At the moment there is no UN authority or process of governance which has a mandate to assure coherence between the obligations of States under the UN Charter, the Human Rights

Conventions and Trade Treaties.

CONCLUSION The International Centre for Human Rights and Democratic Development urges the UNCHR to initiate steps to establish an authority or system of governance to establish coherence between the obligations of States under the UN Charter, the International Bill of Rights and international trade agreements.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF TORTURE AND DETENTION

Written statement* submitted by the Arab Organization for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 December 1999]

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* This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

HOSTAGES: BARGAIN CHIP

The Israeli forces hold one hundred and eighty three (183) Lebanese hostages. 142 hostages are in the Khiam Deflection Camp and the rest (41) hostages are inside Israeli Detention Camps (Askalan, Ayalon Naftha...).

The ages of the detainees range between 14 and 70 years old. The Khiam Detention Camp (KDC) has been established in 1985 and since then has been used for detaining people without any legal documents, no charges or trials and nor right for an attorney.

The Israeli forces have direct control over the KDC and the Israeli secret intelligence conducts the interrogation of the detainees before transferring them to the KDC or the Israeli Detention Camps (IDCs).

14 detainees have died during these "interrogations". Another 2 who died in the American University Hospital after their release are Mr., Salim Awada and Mr. Rida Youssef Mustafa.

Rheumatism, Thalassemia, amnesia, defect of sight, stomachaches, and other health conditions spread wide in the detention camps due to insufficient nutrition, lack of medical care, and the no-light policy practiced by the Israeli forces.

There are the sick and the wounded in the KDC; Mr. Sleiman Ramadan's leg has been amputated in one of the Israel hospitals in 1985 due to the medical negligence of his infected wounds. This continuous medical negligence and the surgical mistake done during the first amputation, lead to the danger of a second amputation of the rest of Mr. Ramadan's leg.

Even children did not escape these centers such as Hassan Moussa Rida (15 Years) who was kidnapped from his village Ayata Al-Chaab on 15 July 1999.

The Israeli forces also hold in its detention centers many old people such as Ali Ghanwi (60 years old), Mr. Mohamad Salim Katbay (64 years old) and Zaki Hassan Awada (66 years old), etc... and they suffer from very bad health condition.

Also in these centers are many women such as the journalist Cosette Elias Ibrabim who was abducted by the Israeli Intelligence Forces on the second of September 1999 because she was accused of preparing reports about the situation in the occupied territories and the majority of civilians detainees (students - farmers).

As for the kidnapped to the interred prisons or IDCs, the fact that they have been moved from the Lebanese territories and tried contradicts articles 49 and 76 of the Geneva Convention VI that states respectively:

" Individuals or mass forcible transfers, as well as deportations of protected persons from occupied territory of the Occupying Power or to that of any other country, occupied or not are prohibited, regardless of their motives..."

" Protected persons accused of offenses shall be detained in the occupied Country and if convicted they shall serve their Sentences therein..."

The abduction in itself is an Offense against the Lebanese authorities. The sentences by the Israeli martial court against those kidnapped are not legal, and contradict all international trial standards. And even when these ilegal sentences have been served by 19 Lebanese hostages in the Ayalon IDC, the Israeli government did not release kept them in detention by renewing their detention period every six months. Some Of these hostages have been detained for periods of more than 11 years after serving their sentences. Such is the cases of Bilal Dakroub, Ahmad Ammar and others. Even the illegal trials are just formalities. There is no difference between detainees who have been tried, detained whose sentence have been served or detainees detained without trials. They are all hostages. The Israeli Supreme Court has admitted on 13 October 1999 that the Lebanese detainees are hostages and constitute a bargain chip.

The legalization of taking hostages by Israel and the torturing practices accepted by their regime, are a clear violation of all international laws and the first of its kind around the world. Never in history the Supreme Court given its blessing to the taking of people as hostages.

Some of those kidnapped have not been tried ever since their abduction, They just sit in their cells that are forbidden to the Red Cross, and are not allowed to even write letters to their families (or receive any from them). Such is the case of Sheik Abdul Karim Obeid and Mr. Mustafa Dirani.

In the Naftha IDC stays Mr., Samir Kintar, the detainee held for the longest period of time since 22/4/79. Mr. Kintar is sentenced for a life in "detention" and is not allowed to any visits from his family despite of the now 22-year imprisonment.

Most of the detainees suffer from some difficult health and psychological conditions. Their families are not allowed to visit them, and they are forced to live in complete isolation from the outside world.

The Israelis also hold tens of Lebanese hostages without admitting that they do. The whereabouts of these people is still unknown.

Charges against the Lebanese detainees may be summarized as follows:

1. Underground resistance against the Israeli occupation.
2. Refusing to be pro-Israeli militia person.
3. Refusing to pay any levies or taxes.
4. Cooperating with the Lebanese government and giving information to the Lebanese Army.
5. Not accepting Israeli aids and refusing to undergo tourist trips to Israel.
6. Having mobile phones.
7. Refusing the Israeli aids and to organize touristic trips to Israel.

The Lebanese hostages' case in the Khiam and Israeli Detention Camps (KDCs) is a national Lebanese cause, and is an international cause in all its humanitarian aspects. This exerts, on the United Nations, the governments worldwide, and the humanitarian Arab and international organizations, the responsibility for a worldwide campaign in the support of the following:

1. The release of all youngsters, sick, wounded women and elderly people in the KDC.
2. The release of all the detainees who served their sentences in Ayalon Prison.
3. The cessation of the torture applied in the KDC the cessation of the cruel non-humanitarian treatment indicted on the detainees for the purpose of degradation of their dignity.
4. Send an international investigation committee to the KDC. Present the criminals of war who have performed the torturing of the detained, whether directly or indirectly, to the international courts. Indemnify the victims and work on their rehabilitation.
5. Allow all the detainees to meet with their families, lawyers, the Red Cross and the human right organizations.
6. Conviction of the Israeli Supreme Court decisions that consider the Lebanese detained as hostages, the thing that contradicts the Declaration of Human Rights so openly.
7. Cancellation of the "formality trials" or the detained and consider these trials as illegitimate according to the international laws.
8. Force the Israelis to admit about the whereabouts of the missing persons or present their bodies to the Red Cross.

The Untied Nations, world governments, international human rights organizations and all those who seek justice and the right of the Man to live, should all work very hard together to help free the humanity from the Khiam Detention Camp, close it, and release all the Lebanese hostages from the israeli Detention Camps.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 January 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The International Federation of Human Rights (FIDH) and its partner organization Human Rights in China (HRIC) are extremely concerned about the ongoing severe and systematic violations of human rights in the People's Republic of China (PRC). While making a show of accepting human rights treaties, the Chinese government has stepped up repression of citizens who have peacefully attempted to exercise the rights guaranteed by these very instruments.

While China signed the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1998 and 1997 respectively, to date it has failed to ratify either of these core instruments, and has committed blatant violations of the rights they contain. These violations include extensive use of arbitrary detention, imprisonment of political and religious dissidents, torture and ill-treatment of detainees, deprivation of the rights to freedom of expression, association and assembly, widespread failure to enforce laws protecting the rights of workers and women, suppression of religious freedom and the use of physical and psychological coercion in the implementation of the population control policy. These human rights abuses have reached such alarming proportions over the past year that FIDH and HRIC believe that the Government of China is currently conducting the most ruthless repression of dissent since the June 4, 1989, Beijing Massacre.

FIDH and HRIC are deeply concerned about the various forms of administrative detention in the PRC, including the administrative measure known as Reeducation through Labor (RTL), which is still being widely used despite the recommendations of the UN Working Group on Arbitrary Detention and the long campaign by Chinese legal scholars and human rights groups to abolish it. According to China's official figures, a yearly total of 230,000 people are currently held under RTL, as compared to around 150,000 in the early 1990s. RTL is applied by the public security departments alone, without any judicial review, to people who have committed acts "too minor" to merit formal prosecution. Those sentenced to RTL are deprived of their rights to counsel, to a fair hearing and to have the lawfulness of their detention reviewed by a judicial authority. Although its maximum duration is three years, it can be renewed for up to one more year if the detainee is considered to have performed badly in his or her "reform." It is frequently used to detain people who have peacefully exercised their rights to freedom of thought, religion, expression and association, and around 50 such people are known to have been sent to labor camps in this way during the past year.

Another lesser known administrative measure is "Custody and Repatriation" (C&R). C&R allows for the arbitrary detention of people considered undesirable by urban authorities whose household registration is not located in the city where they are living or working. Targets include beggars, the homeless, street children, prostitutes and the mentally ill, as well as migrant workers in low status occupations. C&R affects upwards of two million people annually, with some five to 20 percent of these being children, most of whom are detained together with adults. Although generally imposed for up to ten days, C&R essentially allows the police to detain anyone for any reason virtually indefinitely. FIDH and HRIC are concerned about the lack of due process in this system of detention, which is frequently used by police as a way of avoiding the procedural safeguards recently incorporated into the law. They are also concerned about the

abusive conditions in the C&R detention centers. They urge the Government of China to eliminate RTL and C&R, as these systems of detention violate not only international standards, but also Chinese law.

FIDH and HRIC denounce the use of the criminal law, particularly laws on state security and secrets, to imprison people who have merely engaged in peaceful exercise of their basic rights. In 1999, such abusive use of the law particularly targeted members of the China Democracy Party (CDP) and of the Falungong spiritual group.

In August 1999, Liu Xianbin, a CDP activist in Sichuan, was sentenced to 13 years in prison for "conspiracy to subvert state power." Lawyers Liu's family sought to hire withdrew from the case after being pressured to do so by the authorities. In the same month, CDP members She Wanbao, Zha Jianguo and Gao Hongming received prison terms of 12, 9 and 8 years, respectively, also for subversion. Other prominent CDP members serving long sentences include Xu Wenli, Qin Yongmin and Wang Youcai, who were sentenced to 13, 12 and 11 years in December 1998 for attempting to set up the China Democracy Party as a legal independent political party. All were convicted of crimes "endangering state security."

In the trials of these activists, the right to present a defense was ignored, with defendants often being prevented from making statements, even when they had no defense lawyers; proper legal procedure was dispensed with; and the judges reproduced almost verbatim the prosecution indictments as their "verdict." FIDH and HRIC believe that the characterization of these "crimes" and the sentences to be imposed were decided in advance by the political authorities. Family members frequently had great difficulty in attending such trials.

FIDH and HRIC also strongly condemn the secret show trial of four key members of the Falungong group on December 26, as well as the severe sentences imposed. Two of the sentences, 18 years in the case of Li Chang, an official in the Public Security Ministry, and 16 years in the case of Wang Zhiwen, are the harshest known to have been handed down to people for peaceful exercise of their rights since the prosecution of 1989 demonstrators. Massive repression of Falungong members began in July when some 70 leaders were detained after the group was banned as an "illegal organization." In April, 10,000 Falungong members staged a peaceful demonstration in Beijing to demand official recognition.

These show trials and the extreme punishments imposed are the inevitable product of the resolution passed by the National People's Congress (NPC) Standing Committee on October 30. Although the resolution did not create any new legal standards to pursue the government's anti-Falungong crusade, it called for a political campaign reminiscent of the methods of the past using the tools already available in the Criminal Code's provisions allowing for the prosecution of those who use "secret societies and heretical religious groups" to "disturb social order." The NPC Decision was a political order to the country's entire law enforcement apparatus to give priority to "smashing" the Falungong and other "heretical" organizations.

The NPC Decision demonstrates how the agenda of China's judiciary continues to be set by the political priorities of the ruling Party, rather than the exigencies of the law or of social reality, a fact that FIDH and HRIC believe calls into question the direction of legal reform. The campaign against Falungong is part of a wider effort to restrict freedom of association by

ensuring that all "legal" groups are strictly monitored to make sure their activities conform with the leadership's objectives and concerns and by ruthlessly suppressing any efforts to organize independently, whether around issues of religion, politics, human rights, or protecting workers. FIDH and HRIC urge the Chinese government to immediately and unconditionally release all those sentenced to prison or RTL for peaceful acts relating to their membership of Falungong, and to lift the ban on the Falungong.

FIDH and HRIC believe that the Chinese government's suppression of dissent has borne out concerns they and others have previously expressed about how incorporating the term "state security" into Chinese law actually broadened the state's capacity to curtail fundamental rights. The way this "legal reform" has been used in the past year to justify violations of basic rights, including peaceful acts of freedom of expression, association and assembly, is very clear.

FIDH and HRIC strongly recommend that, in accordance with its mandate, the UN Commission on Human Rights adopt a resolution on the human rights situation in China which addresses the above concerns. This resolution should urge the Chinese government to ratify the ICESCR and the ICCPR and to implement their provisions; it should call on the Government of China to release immediately and unconditionally all prisoners of conscience and to allow all Chinese citizens to enjoy fully their rights to freedom of expression, assembly and association, and it should insist that the Government of China renew cooperation with the UN High Commissioner for Human Rights, which has been at a standstill since the March 1999 Needs Assessment Mission. The resolution should also urge the Government of China to implement the recommendations of the UN Working Group on Arbitrary Detention and to invite other thematic procedures to conduct in situ missions in accordance with their own terms of reference; and should request that the UN Secretary General draft a report on the human rights situation in China, to be presented at the next Commission session.

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PROMOTION AND PROTECTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS

Written statement* submitted by the World Organization against Torture, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 January 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

GE.00-11004 (E)

The adoption on 10 December 1998 of a Declaration on Human Rights Defenders was a definite sign of progress and provides references and criteria which States should take into account in matters relating to human rights and in particular to human rights defenders.

While we welcome this Declaration as a significant step forward, we regret to note that no institutional monitoring mechanism has been established. Forum 98 has therefore taken the initiative of bridging this gap to the extent that it is able.

Forum 98, a coalition of NGOs, most of them with special consultative status, organized a major international meeting on the protection of human rights defenders, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights. By the end of the conference - which had received substantial support from the Swiss Confederation - Forum 98 and all the delegates (more than 250) had drawn up a programme of action (see annex).

One of our concerns and hopes was that the Commission would appoint a special rapporteur on the question of human rights defenders. As this goal has not yet been achieved, Forum 98 decided to prepare a report on how States in the various regions of the world are or are not implementing the principles contained in the Declaration on Human Rights Defenders.

A significant number of NGOs around the world are therefore being asked about local situations and the conditions in which NGOs have to work. Their replies will be compiled and presented as a report to the next session of the Commission on Human Rights.

We wish, therefore, to inform you of this project, which is of great importance to all human rights organizations.

On behalf of the member organizations of Forum 98
Eric Sottas, Chair, Director, OMCT

Geneva, 16 December 1999.